NOTES

Law Library.—During the last seven years, the Law Library has increased in size at the rate of more than five thousand volumes a year. According to statistics compiled by the Association of the Bar of the City of New York, only three law libraries in the United States exceed in size the Columbia University Law Library. The accessions of the present Academic year ending June 30, 1922, will bring the total up to one hundred thousand volumes. Part of this growth is quantitative only, duplication of sets of law reports, legal periodicals, and important treatises being necessitated by the growth of the school. Nevertheless the character of the whole collection is steadily being changed so that, while the ordinary needs of law students are better provided for, the requirements of advanced scholars in law will be met. The whole movement for strengthening the library has been fostered by the President and Trustees of the University and by the Columbia University Law Library Association, the membership of which is made up of alumni, students and faculty of the school.

The varied character of recent accessions indicates by example what the ultimate scope of the library will be. In American law, many early session laws and compilations have been added, partly through the generosity of alumni, among whom should be mentioned Mr. Gustavus T. Kirby, Law '98. Many scarce British and British Colonial reports, periodicals and statutes have been acquired, so that the collection of this material is appreciably nearer completion. Laws, codes and commentaries have been added for Bolivia, Chile, Costa Rica, Cuba, Mexico, Paraguay, Peru and Venezuela. Important sets of Continental law books for the older states, as well as the beginnings of sets for the new states, have come in. The international law collection has been greatly enlarged by the addition of treaty sets, and publications by and about the League of Nations. A collection of books on legal biography has been formed.

Rights Under Contracts in Violation of the Interstate Commerce Act.—The courts have frequently declared the purpose of the *Interstate Commerce Act*[1] to be not only to control carriers engaged in interstate commerce,[2] but also to secure equality of treatment for all shippers by providing for the establishment of just, reasonable and uniform rates, by forbidding all preferences and discriminations, and by preventing secret and special agreements.[3] The *Interstate Commerce Act* effectuated the supremacy of federal law,[4] and where a state law conflicts

[1] (1887) 24 Stat. 379, U. S. Comp. Stat. (1916) § 8563.

[2] See *Southern Ry.* v. *Prescott* (1916) 240 U. S. 632, 639, 36 Sup. Ct. 469; *Adams Express Co.* v. *Cook* (1915) 162 Ky. 592, 595, 172 S. W. 1096.

[3] See *Kansas City So. Ry.* v. *Albers Comm. Co.* (1912) 223 U. S. 573, 597, 32 Sup. Ct. 316; *Texas & Pac. Ry.* v. *Abilene Cotton Oil Co.* (1907) 204 U. S. 426, 437 *et seq.*, 27 Sup. Ct. 350.

This purpose is manifested in § 6 (7) of the *Act*, which provides in effect that no carrier shall transport unless the rates have been filed and published and shall not receive "a greater less or different compensation for such transportation." See *Louisville & Nashville R. R.* v. *Mottley* (1911) 219 U. S. 467, 475-6, 31 Sup. Ct. 265. A like intention is indicated in § 1 of the *Elkins Act* (1903) 32 Stat. 847, as amended by the *Hepburn Act* (1906) 34 Stat. 584, § 2, U. S. Comp. Stat. (1916) § 8597, which makes it a misdemeanor to do so "by any device." See *Armour Packing Co.* v. *United States* (1908) 209 U. S. 56, 72, 28 Sup. Ct. 428; *New Haven R. R.* v. *Interstate Com. Com.* (1906) 200 U. S. 361, 391, 26 Sup. Ct. 272.

[4] See *Atchison etc. Ry. Co.* v. *Robinson* (1914) 233 U. S. 173, 180, 34 Sup. Ct. 556; *Adams Express Co.* v. *Croninger* (1913) 226 U. S. 491, 33 Sup. Ct. 148.

with the *Act* the latter must prevail.[5] It becomes necessary, then, to examine the status of contracts which are in violation of the *Act* and to determine to what extent its policy will invalidate them, and what rights, if any, the courts will allow the contracting parties.

As a general rule a contract in contravention of a statute is void and unenforceable though the courts will often hesitate to impose further penalty.[6] In other words, where the statute imposes a fine or penalty for its violation, the parties may still be allowed at least some rights under the contract, unless the policy behind the enactment urgently forbids. Yet the imposition of a penalty by the terms of a statute unusally implies a prohibition of the transaction[7] and renders void a contract in violation of the statutory enactment. Although it is said that it is impossible at the present day to distinguish between *mala prohibita* and *mala in se*,[8] it is often necessary to consider the reason why and the extent to which the prohibited transaction is wrongful before determining the rights of the parties to the contract.[9] Where the statute violated is devised solely to produce revenue, it is sensible to regard the legislature as not prohibiting the transaction, and to allow a recovery on the contract.[10] The *Interstate Commerce Act*, however, is not a statute for revenue. Even where the transaction is prohibited, the courts will sometimes sustain an action for the successful prosecution of which the validity of the contract is a *sine qua non*.[11] It seems, therefore, that the prohibitions or sanctions which a court will apply to a transaction in contravention of a statute, depend on the strength of the policy behind the statute violated.

Where the contract is in violation of a statute the courts will refuse to decree that it be specifically performed.[12] Contracts in violation of the *Interstate Commerce Act* form no exception to this rule.[13] The strength of the policy of preventing discriminations is shown by the fact that even though a contract was valid when made, it will not be enforced if it would violate the *Act* when performance is sought.[13a]

It is still a federal question though general common law principles must be applied. See *Southern Ry.* v. *Prescott, supra,* footnote 2, p. 640.

[5] *Gulf, Colorado etc. Ry.* v. *Hefley* (1895) 158 U. S. 98, esp. p. 102, 15 Sup. Ct. 802; see *Shroyer* v. *Chicago, R. I. & G. Ry.* (Tex. 1920) 222 S. W. 1095, 1096.

[6] See *Dunlop* v. *Mercer* (C. C. A. 1907) 156 Fed. 545, 555. If, however, it is sufficiently important that the objects of the statute be carried out, the court will even impose a double penalty. *Cf. Albertson* v. *Shenton, infra,* footnote 10 (The plaintiff, who without a license sold a ring, could recover neither the price nor the ring).

[7] *Miller* v. *Post* (Mass. 1861) 1 Allen 434; *Harrison* v. *Jones* (1885) 80 Ala. 412; see *Compagionette* v. *McArmick* (1909) 91 Ark. 69, 72, 120 S. W. 400.

[8] See *Gibbs* v. *Baltimore Gas Co.* (1889) 130 U. S. 396, 411-12, 9 Sup. Ct. 553; *Penn* v. *Bornman* (1882) 102 Ill. 523, 530.

[9] *Thompson* v. *St. Nicholas Nat. Bk.* (1892) 146 U. S. 240, 13 Sup. Ct. 66 (The court here considered the intention of Congress in enacting a statute, and held it was not to invalidate the transactions). See Williston, *Contracts* (1920) § 1764.

[10] *Larned* v. *Andrews* (1871) 106 Mass. 435; see *Albertson* v. *Shenton* (1916) 78 N. H. 216, 218-9, 98 Atl. 516; *cf. Ruckman* v. *Bergholz* (1874) 37 N. J. L. 437, *aff'd* (1876) 38 N. J. L. 53 (where the sole object of a federal statute requiring a real estate agent to take out a license was held to be the raising of revenue).

[11] *Ordway* v. *Newburyport* (1918) 230 Mass. 306, 119 N. E. 863; *Rutkowsky* v. *Bozza* (1909) 77 N. J. L. 724, 73 Atl. 502; *Lane* v. *Henry* (1914) 80 Wash. 172, 141 Pac. 365. See Williston, *op. cit.,* § 1767.

[12] *Mundy* v. *Shellaberger* (C. C. A. 1908) 161 Fed. 503 (A statute made the sale of a homestead by a husband without his wife's signature null and void, and the court held that an executory contract to convey entered into by the husband alone could not be specifically enforced).

[13] *Louisville & Nashville R. R.* v. *Mottley, supra,* footnote 3.

[13a] *Ibid.*

A prohibition even more drastic than a refusal to grant specific performance of an executory contract would be a refusal to permit a recovery of damages for a breach of the contract. There are, however, numerous examples of situations where the courts have refused to allow such an action. For example, the vendor cannot recover the price of goods where a statute forbids their sale under certain conditions.[14] These are usually statutes designed to safeguard the public health, *e. g.*, requiring milk sold to be of a certain grade,[15] prohibiting the sale of diseased cattle[16] and regulating the sale of liquor.[17] If the claim, to enforce which the action is brought, requires the support of the illegal transaction, it will fail. Thus it is held that a physician not licensed to practice or an attorney not admitted to the bar cannot recover compensation for services.[18] An action for the breach of a contract contravening a statute is, however, sometimes allowed.[19] By the *Interstate Commerce Act,* the common carriers' common law rights of private contract have been abrogated so far as interstate shipments are concerned.[20] The parties are not, therefore, at liberty to alter by special contract the terms of service provided for in the tariff regulations, since this would be a discrimination against other shippers.[21] Where the carrier has agreed to furnish some special or expedited service the contract is void and the shipper cannot recover in damages for a breach of the agreement by the carrier, whether the rate charged was the regular

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[14] *Eaton* v. *Kegan* (1874) 114 Mass. 433 (where a statute provided oats should be sold by the bushel); *Miller* v. *Post, supra,* footnote 7 (where a statute provided a penalty for selling milk except by sealed measure); *Smith* v. *Evans* (1906) 125 Ga. 109, 53 S. E. 589 (imported second-hand clothing (*semble*); see Williston, *op. cit.,* § 1763.

[15] See *Copeland* v. *Boston Dairy Co.* (1903) 184 Mass. 207, 209, 68 N. E. 201; *Whitcomb* v. *Boston Dairy Co.* (1914) 218 Mass. 24, 105 N. E. 554 (*semble*).

[16] *Church* v. *Knowles* (1906) 101 Me. 264, 63 Atl. 1042 (statute made it an offense to sell infected oxen); *Compagionette* v. *McArmick, supra,* footnote 7 (statute made it a misdemeanor to sell a horse having glanders) (*semble*).

[17] *Miller* v. *Ammon* (1892) 145 U. S. 421, 12 Sup. Ct. 844; *Bondy* v. *Hardina* (1913) 216 Mass. 44, 102 N. E. 935.

[18] *Gardner* v. *Tatum* (1889) 81 Cal. 370, 22 Pac. 880 (physician); *Browne* v. *Phelps* (1912) 211 Mass. 376, 97 N. E. 762 (attorney).

[19] See cases cited *supra,* footnote 10.

[20] No recovery may be had by the shipper because the rate charged was unreasonable where in fact it was the tariff rate. *Texas & Pac. Ry.* v. *Abilene Cotton Oil Co., supra,* footnote 3; *Texas & Pac. Ry.* v. *Cisco Oil Mill* (1907) 204 U. S. 449, 27 Sup. Ct. 358. The remedy of the shipper is by application to the Interstate Commerce Commission for a change of rate and reparation.

Under the *Interstate Commerce Act, supra,* footnote 1, § 6 (7), the carrier is required to file a schedule of rates with the *Interstate Commerce Commission.* See *Gulf, Colorado etc. Ry.* v. *Hefley, supra,* footnote 5, p. 101. It is not allowed to transport property unless the rate has been filed as provided. *Tex. & Pac. Ry.* v. *Am. Tie Co.* (1914) 234 U. S. 138, 34 Sup. Ct. 885. (Where no through rate has been made or filed the carrier cannot make a through rate without violating the *Act.* See *Southern Ry. Co.* v. *Reid* (1912) 222 U. S. 424, 441, 32 Sup. Ct. 140). These rates must be published. (Posting is, however, not essential to the validity of the rate. See *Kansas City So. Ry.* v. *Albers Comm. Co., supra,* footnote 3, p. 594. Nor does failure to post rates estop the carrier from collecting the tariff rate. *Illinois Cent. R. R.* v. *Henderson Elevator Co., infra,* footnote 27). So published, these constitute the only legal rates. *Pittsburgh etc. Ry.* v. *Fink, infra,* footnote 28; *Texas & Pac. Ry. Co.* v. *Mugg, infra,* footnote 25. Both shipper and carrier are conclusively presumed to know what the legal rate is, and are bound thereby. *Adams Express Co.* v. *Croninger, supra,* footnote 4; see *Pittsburgh etc. Ry. Co.* v. *Fink, supra,* 581.

[21] See *Southern Ry.* v. *Prescott, supra,* footnote 2, p. 638. The court here says: "This is the plain purpose of the statute in order to shut the door to all contrivances in violation of its provisions against preferences and discriminations. No carrier may extend 'any privileges or facilities,' save as these have been duly specified."

rate,[22] or a higher rate, [23] unless, of course, the same special service is offered to all at duly published charges.[24] Nor can the carrier be held in damages for a failure to carry out an agreement to furnish the usual service at a less rate.[25] This would be in effect providing for rebates, the giving of which is prohibited by the *Act;* and a contract which does so provide is void, and no recovery will be allowed for its breach.[26] Conversely the carrier may disregard the special contract and sue to recover the full tariff rate [27] or the balance if the shipper has paid the rate provided in the contract, whether collected intentionally or by mistake;[28] in fact, the carrier is under a legal duty so to do.[29] The carrier, whether plaintiff or defendant, is not estopped to assert the invalidity of his contract with the shipper when it is in violation of the *Act*.[30] This is in consonance with the general principle that a man cannot estop himself from setting up the invalidity of any transaction to which he is a party, when that transaction is penalized or prohibited by law or is contrary to public policy.[31] It is to be expected that the courts would refuse to allow an estoppel which would defeat the aims of the *Act*.

In the recent case of *Payne* v. *Bassett* (Tex. Civ. App. 1921) 235 S. W. 917, the plaintiff sued for the market value of goods lost or converted en route. The defendant carrier's agent had knowingly received a box containing cut glass and silverware and had shipped it listed as "cut glass." The defendant pleaded that under the *Interstate Commerce Act*, § 6 (7), it was forbidden to transport property unless the rate for its transportation had been filed and published in accordance with the provisions of the *Act*, and that the tariff schedule as filed provided that precious metals, or articles made from them, should not be accepted for shipment.

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[22] *Chicago & Alton R. R.* v. *Kirby* (1912) 225 U. S. 155, 32 Sup. Ct. 648; *Sheldon* v. *Chicago, B. & Q. R. Co.* (1918) 184 Iowa 865, 169 N. W. 189; *Texas & P. Ry. Co.* v. *West Bros.* (Tex. 1919) 207 S. W. 918; *Engemoen* v. *Chicago, St. P., M. & O. Ry.* (C. C. A. 1914) 210 Fed. 896 (*semble*). The effect of such an agreement would be that the shipper would pay a rate less than the tariff rate. See *Sheldon* v. *Chicago, B. & Q. R. Co., supra,* 190.

[23] See *Chicago & Alton R. R.* v. *Kirby, supra,* footnote 22, p. 165.

[24] See *J. H. Hamlen & Sons Co.* v. *Illinois Cent. R. R.* (D. C. 1914) 212 Fed. 324, 328; *Clemons Produce Co.* v. *Denver & R. G. R. R.* (1920) 203 Mo. App. 100, 101, 219 S. W. 660.

[25] *Gulf, Colorado etc. Ry.* v. *Hefley, supra,* footnote 5; *Texas & Pac. Ry.* v. *Mugg* (1906) 202 U. S. 242, 26 Sup. Ct. 628.

[26] *Lewis, Leonhardt & Co.* v. *Southern Ry.* (C. C. A. 1914) 217 Fed. 321; *St. Louis & S. F. R. Co.* v. *Pickens* (1915) 51 Okla. 455, esp. p. 458, 151 Pac. 1055. The shipper cannot recover the difference between the special contract rate and that provided in the tariff. *Kansas City So. Ry.* v. *Albers Comm. Co., supra,* footnote 3. Nor can the shipper sue for damages for the detention of the goods except on tender of the full tariff rate. *Southern Ry.* v. *Harrison* (1898) 119 Ala. 539, 24 So. 552; *Gulf, Colorado etc. Ry.* v. *Hefley, supra,* footnote 5. Nor can he maintain replevin for the goods. *Chicago, R. I. & P. Ry.* v. *Whedbee* (1913) 106 Ark. 237, 153 S. W. 86.

[27] *Illinois Cent. R. R.* v. *Henderson Elevator Co.* (1913) 226 U. S. 441, 33 Sup. Ct. 176; see *St. Louis & S. F. R. Co.* v. *Pickens, supra,* footnote 26, p. 458.

[28] *Pittsburgh, etc. Ry. Co.* v. *Fink* (1919) 250 U. S. 577, 40 Sup. Ct. 27; *New York, N. H. & H. R. R.* v. *York & Whitney Co.* (1913) 215 Mass. 36, 102 N. E. 366 (where no special rate was provided and the carrier by mistake collected less than the tariff rate).

[29] *Louisville & Nashville R. R.* v. *Maxwell* (1915) 237 U. S. 94, esp. p. 98, 35 Sup. Ct. 494; see (1917) 17 COLUMBIA LAW REV. 553, 555.

[30] *New York, N. H. & H. R. R.* v. *York & Whitney Co., supra,* footnote 28; see *Pennsylvania R. R.* v. *Titus* (1913) 156 App. Div. 830, 832, 142 N. Y. Supp. 43 *rev'd* on other grounds (1914) 216 N. Y. 17, 109 N. E. 857; *Chicago & Alton R. R.* v. *Kirby, supra,* footnote 22; see (1917) 17 COLUMBIA LAW REV. 553, 555.

[31] *Central of Georgia Ry. Co.* v. *Blount* (C. C. A. 1917) 238 Fed. 292; *Hedges* v. *Frink* (1917) 174 Cal. 552, 163 Pac. 884; *Langan & Noble* v. *Sanky* (1880) 55 Iowa 52, 7 N. W. 393; *Shorman* v. *Eakin* (1886) 47 Ark. 351, 1 S. W. 559.

The court held that as the contract of shipment was in violation of the *Interstate Commerce Act* the plaintiff could recover only the value of the cut glass.

The court is really applying a prohibition even more stringent than a refusal to allow damages for breach of contract as they are holding that there can be no recovery of the value of goods actually received for shipment on the ground that such an action is essentially based on a contract which violates the *Act*. While this may be a hardship on an innocent shipper, the policy of the *Act* to prevent discriminations and the extending of special facilities warrants such a result. Though the shipper may, in fact, be innocent, the question of his innocence does not enter since there is but one legal schedule of tariff rates which he is conclusively presumed to know. In other situations the courts have refused to uphold actions for the value of goods where the shipper based his right to recovery on a contract indirectly violating the *Act*.[32] It is a similar desire to prevent discriminations which has led the courts to uphold the validity of stipulations in bills of lading, limiting liability for loss of the goods, where such limitations are based on alternate rates.[33] In such a case the shipper is bound by the limitation even though he did not know of it.[34]

In general, a carrier's liability is that of an insurer,[35] and this may be enforced in a contract action by the shipper[36] or in an action *ex delicto* by the owner of the goods[37] though he has no contract with the carrier. This liability is imposed by law from reasons of policy; and it would seem that when policy so requires it may be extinguished. To deny recovery in the instant case is, it seems, a denial of this liability justified by the strength of the policy behind the *Act*. There are cases which support the view that if the carrier were negligent there may be recovery for the negligence, even though the contract was invalid as violating the *Act*.[38] It is doubtful, however, whether these cases would be followed by the Supreme Court today.[39]

Where there was an indirect violation of the *Act* another court, in the recent case of *Williams* v. *Exp. Co.* (S. C. 1921) 110 S. E. 125, has gone even further in upholding its policy. This court held that where the defendant's agent had represented that the express rates on a shipment would not be in excess of a certain amount, and the defendant had in fact collected the full tariff rate, the plaintiff could not recover as damages in a deceit action the difference between the stated

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[32] In *Atchison etc. Ry.* v. *Robinson, supra,* footnote 4, the plaintiff made an oral agreement to ship a race horse on which no value was stated. He signed a bill of lading limiting the value recoverable according to the rate paid, and the court held he could not recover the full value. The court said, p. 181: "To maintain the supremacy of such oral agreements would defeat the primary purposes of the Interstate Commerce Act, so often affirmed in the decisions of this court which are to require equal treatment of all shippers and the charging of but one rate to all, and that the one filed as required by the Act."

[33] *Cincinnati & Tex. Pac. Ry.* v. *Rankin* (1916) 241 U. S. 319, 36 Sup. Ct. 555.

[34] *Adams Express Co.* v. *Croninger, supra,* footnote 4; *Kansas Southern Ry.* v. *Carl* (1913) 227 U. S. 639, 33 Sup. Ct. 391.

[35] See *Cleveland, etc., R. R.* v. *Henry* (1908) 170 Ind. 94, 99, 100, 83 N. E. 710.

[36] *Catlin* v. *Adirondack Co.* (N. Y. 1880) 11 Abb. N. C. 377; *Wernick* v. *St. Louis & S. F. R. R.* (1908) 131 Mo. App. 37, 109 S. W. 1027; *Blackmer & Post Pipe Co.* v. *Mobile & O. R. R.* (1909) 137 Mo. App. 479, 119 S. W. 1.

[37] *Schlosser* v. *Great Northern Ry.* (1910) 20 N. Dak. 406, 127 N. W. 502.

[38] *Judge* v. *Northern Pac. Ry.* (C. C. 1911) 189 Fed. 1014; *Chesapeake & O. Ry.* v. *Jordan* (1916) 63 Ind. App. 365, 114 N. E. 461; *Houston & T. C. R. R.* v. *Commons* (Tex. Civ. App. 1913) 160 S. W. 1107 (*semble*); see *Merchants' Cotton Press Co.* v. *N. A. Ins. Co.* (1894) 151 U. S. 368, 388, 14 Sup. Ct. 367.

[39] *Cf. Illinois Cent. R. R.* v. *Messina* (1915) 240 U. S. 395, 36 Sup. Ct. 368, where the plaintiff, riding illegally, was injured and the court refused recovery. It would seem as if the policy of requiring a carrier to guard the safety of the public should outweigh the policy of the *Interstate Commerce Act*. See (1916) 16 COLUMBIA LAW REV. 427.

and the tariff rate. The court said that to allow such an action would defeat the purpose of the *Interstate Commerce Act* to secure uniformity of rates and prevent discriminations. As previously mentioned, the legal rate is the tariff rate, of which knowledge is presumed;[40] and the shipper cannot recover in contract the difference between this and the special or misquoted rate.[41] There would seem, therefore, no reason for allowing the shipper in the *Williams* case to recover the same quantum of damages merely because the action is in name a deceit action, though, in effect, accomplishing the same result as one based on the contract. The opportunities for side stepping the *Act* would be too great and a door would thereby be opened to rebates and discrimination. The policy against such inequalities is so strong that hardship will be worked on individuals for the greater good to all shippers.[42] There seems, indeed, to be a conflict between the desire to inflict no further penalties for violations than those provided in the *Act*,[43] and the desire to uphold its purpose; the latter, as evidenced by the instant cases, seems to be prevailing.

WORKMEN'S COMPENSATION ACTS AND THE LAW OF LEGAL CAUSE.—While one contributes little by announcing that the decisions under the workmen's compensation statutes are *sui generis* and largely irreconcilable, that fact must be recognized at the outset, and we can at most seek an explanation of this deplorable lack of certainty in a branch of the law where certainty is so desirable. It is practically impossible to predict with any degree of assurance what the court will hold until a decision has been handed down on the precise facts involved. Most of the statutes in the United States, modeled after the English Acts of 1897 and 1906, award compensation for "personal injury by accident arising out of and in the course of employment."[1] The most difficult type of case, and the one chiefly to be discussed here, is that in which the injury-producing force springs from a source foreign to the employment; the employment being a contributing factor only in that it brings the workman into contact with the force. Confusion reigns on this question not only among the various jurisdictions, but even within the jurisdictions themselves.[2] Proceeding on the assumption that the proper solution is to be found in the application of the rules of legal proximate cause, the courts have applied the doctrine in varying fashion, ranging from the most progressive to the most reactionary interpretations of the rule of causation.

The lavish use of synonyms has added little of positive value to the definition of the phrase "arising out of the employment." The first English Act[3] applied only to certain hazardous trades, the compensation, according to one notion,

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[40] See cases cited *supra*, footnote 20.

[41] *Kansas City So. Ry.* v. *Albers Comm. Co.*, *supra*, footnote 3; and cases cited *supra*, footnotes 25, 26.

[42] See *New York, N. H. & H. R. R.* v. *York & Whitney Co.*, *supra*, footnote 28, p. 41.

[43] See § 1 of the *Elkins Act*, *supra*, footnote 3, which provides monetary penalties for violations.

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[1] For a representative statute see N. Y. Laws 1913, c. 816. No attempt will be made to treat the numerous and knotty problems embraced in the words "in the course of the employment." That phrase includes: (1) the period of employment, *i. e.*, at what time the employee has started on the employer's work and at what time he has ceased; (2) the scope of the employee's work, *i. e.*, whether he is engaged in doing his employer's work at the time. To sustain a recovery it must appear that the injury arose out of the employment as well as in its course. *Matter of Saenger* v. *Locke* (1917) 220 N. Y. 556, 116 N. E. 367; *Bryant, Adm'x.* v. *Fissel* (1913) 84 N. J. L. 72, 86 Atl. 458.

[2] See (1916) 16 COLUMBIA LAW REV. 267.

[3] (1897) 60 & 61 St. Vict., c. 37; *repealed* (1906) 6 St. Edw. 7, c. 58.